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**FILED**

**APR 08 2013**

**Board of Vocational Nursing  
and Psychiatric Technicians**

8 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. VN-2009-3441

11 JAMES FRANKLAND SMITH  
12 7560 Hollywood Blvd., Apt. 402  
13 Los Angeles, CA 90046

**A C C U S A T I O N**

14 Vocational Nurse License No. VN 223912

Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
19 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
20 Technicians, Department of Consumer Affairs (Board).

21 2. On or about November 3, 2006, the Board issued Vocational Nurse License No. VN  
22 223912 to James Frankland Smith (Respondent). The Vocational Nurse License was in full force  
23 and effect at all times relevant to the charges brought herein and will expire on June 30, 2014,  
24 unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

**STATUTORY PROVISIONS**

4. Section 118, subdivision (b), provides that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1, the Bureau may renew an expired license at any time within four (4) years after the expiration.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. . . ."

6. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a

1 record pertaining to an arrest.

2 This section shall not be construed to apply to any drug diversion program operated by any  
3 agency established under Division 2 (commencing with Section 500) of this code, or any  
4 initiative act referred to in that division."

5 7. Section 2875 provides that the Board may discipline the holder of a vocational nurse  
6 license for any reason provided in Article 3 (commencing with section 2875) of the Vocational  
7 Nursing Practice Act.

8 8. Section 2878 states, in pertinent part:

9 "The Board may suspend or revoke a license issued under this chapter [the Vocational  
10 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

11 "(a) Unprofessional conduct, . . .

12 . . . .

13 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
14 violating of, or conspiring to violate any provision or term of this chapter.

15 . . . .

16 (f) Conviction of a crime substantially related to the qualifications, functions, and duties  
17 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive  
18 evidence of the conviction. . . ."

19 9. Section 2878.5 states, in pertinent part:

20 In addition to other acts constituting unprofessional conduct within the meaning of this  
21 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed  
22 under this chapter to do any of the following:

23 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
24 physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or  
25 administer to another, any controlled substance as defined in Division 10 of the Health and Safety  
26 Code, or any dangerous drug as defined in Section 4022.

27 (b) Use any controlled substance as defined in Division 10 of the Health and Safety  
28 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in

1 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the  
2 extent that the use impairs his or her ability to conduct with safety to the public the practice  
3 authorized by his or her license.

4 . . . .

5 (d) Be committed or confined by a court of competent jurisdiction for intemperate use of  
6 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this  
7 section, in which event the court order of commitment or confinement is prima facie evidence of  
8 that commitment or confinement. . . ."

9 **REGULATORY PROVISIONS**

10 10. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

11 “. . . .

12 (b) A licensed vocational nurse shall adhere to standards of the profession and shall  
13 incorporate ethical and behavioral standards of professional practice which include but are not  
14 limited to the following:

15 . . . .

16 (4) Abstaining from chemical/substance abuse; and

17 . . . .

18 (c) A violation of this section constitutes unprofessional conduct for purposes of  
19 initiating disciplinary action.”

20 11. California Code of Regulations, title 16, section 2521 states, in pertinent part:

21 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5  
22 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
23 considered to be substantially related to the qualifications, functions or duties of a licensed  
24 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed  
25 vocational nurse to perform the functions authorized by his license in a manner consistent with  
26 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those  
27 involving the following:

28 . . . .

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the  
3 Business and Professions Code.

4 . . . .

5 (f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or  
6 dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and  
7 Professions Code."

#### 8 **COST RECOVERY**

9 12. Section 125.3 provides that the Board may request the administrative law judge to  
10 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
11 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### 12 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

13 13. Methamphetamine is a Schedule II controlled substance as designated by Health and  
14 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to  
15 section 4022.

#### 16 **FIRST CAUSE FOR DISCIPLINE**

##### 17 ***(Illegal Possession of a Controlled Substance – Methamphetamine)***

18 14. Respondent is subject to disciplinary action under sections 2878, subdivision (a), and  
19 2878.5, subdivision (a), on the grounds of unprofessional conduct, in that, on or about  
20 September 15, 2010, Respondent was in possession of methamphetamine, a controlled substance  
21 and dangerous drug, without a valid prescription, as follows:

22 a. On or about September 15, 2010, Respondent was walking on the side of the road  
23 exhibiting signs and symptoms of being under the influence, had fresh puncture wounds which  
24 were swollen and red with fresh blood on his left arm, and was in possession of two (2) baggies  
25 of methamphetamine without a valid prescription, and two (2) used hypodermic syringes without  
26 a valid prescription. Respondent was arrested.

27 b. On or about September 17, 2010, after pleading guilty, Respondent was placed on  
28 deferred entry of judgment for two (2) years for violating one misdemeanor count of Health and

1 Safety Code section 11377(a) [possession of a controlled substance] in the criminal proceeding  
2 entitled *The People of the State of California v. James Franklin Smith* (Super. Ct. Los Angeles  
3 County, 2010, No. 0BV01940). On or about March 14, 2012, Respondent successfully  
4 completed the deferred entry of judgment program, and the matter was dismissed pursuant to  
5 Penal Code section 1000.3.

6 **SECOND CAUSE FOR DISCIPLINE**

7 ***(Dangerous Use of Controlled Substances)***

8 15. Respondent is subject to disciplinary action under sections 2878, subdivision (a),  
9 and 2878.5, subdivision (a), on the grounds of unprofessional conduct, in that, on or about  
10 September 15, 2010, Respondent dangerously used controlled substances to an extent or in a  
11 manner dangerous or injurious to himself or others, or to the extent that the use impaired his  
12 ability to conduct with safety to the public the practice authorized by his license. Complainant  
13 refers to and by this reference incorporates the allegations set forth above in paragraph 14,  
14 subparagraphs a and b, inclusive, as though set forth fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 ***(Confinement Commitment for Addiction)***

17 16. Respondent is subject to disciplinary action under sections 2878, subdivision (a),  
18 and 2878.5, subdivision (d), on the grounds of unprofessional conduct, in that, on or about  
19 September 17, 2010, Respondent was committed or confined by a court of competent jurisdiction  
20 for his intemperate use of or addiction to controlled substances, methamphetamine, when he was  
21 ordered to complete deferred entry of judgment, the Penal Code section 1000 Program.  
22 Respondent entered the program on or about November 10, 2010, and completed the program on  
23 or about March 14, 2012. Complainant refers to and by this reference incorporates the allegations  
24 set forth above in paragraph 14, subparagraphs a and b, inclusive, as though set forth fully.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 ***(Failure to Abstain from Chemical/Substance Abuse)***

27 17. Respondent is subject to disciplinary action under section 2878, subdivision (a),  
28 and California Code of Regulations, title 16, section 2518.6, subdivision (b)(4), on the grounds of

unprofessional conduct, in that, on or about March 15, 2010, Respondent failed to adhere to standards of the professions by failing to abstain from chemical/substance abuse. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 14 16, inclusive, as though set forth fully.

#### **FIFTH CAUSE FOR DISCIPLINE**

##### ***(Conviction of a Substantially Related Crime)***

18. Respondent is subject to disciplinary action under sections 490 and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, in that, on or about March 24, 2010, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse which to a substantial degree evidences his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, as follows:

a. On or about March 24, 2010, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.1(a) [drive with a suspended or revoked license] in the criminal proceeding entitled *The People of the State of California v. James Smith* (Super. Ct. Los Angeles County, 2010, No. 0HY00600). The Court sentenced Respondent to ten (10) days jail, and placed him on 24 months probation.

b. The circumstances underlying the conviction are that on or about March 2, 2010, Respondent drove a vehicle while having a suspended driver's license. The vehicle had an expired registration and no proof of insurance. During the vehicle search, two (2) hypodermic syringes were found.

#### **SIXTH CAUSE FOR DISCIPLINE**

##### ***(Unprofessional Conduct / Conduct Violating the Act)***

19. Respondent is subject to disciplinary action under sections 2878, subdivisions (a) and/or (d), in that, Respondent committed acts of unprofessional conduct, and/or acts violating the Vocational Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 14 18, inclusive, as though set forth fully.

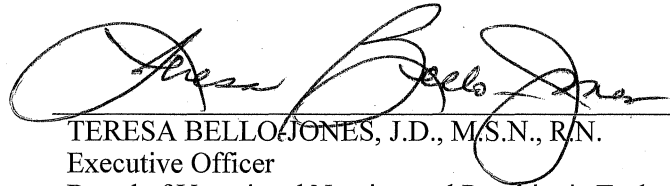
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**PRAYER**

*WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Vocational Nurse License No. VN 223912, issued to James Frankland Smith;
2. Ordering James Frankland Smith to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: **APR 08 2013**



TERESA BELLO JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*